

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. **09-20423** **AM-GOLD**

UNITED STATES OF AMERICA,)
)
Petitioner,)
)
v.)
)
UBS AG,)
)
Respondent.)

McALILEY

FILED by *LM* D.C.
FEB 19 2009
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

PETITION TO ENFORCE JOHN DOE SUMMONS

The United States of America petitions this Court for an order enforcing the IRS "John Doe" summons served on the respondent, UBS. In support, the United States alleges as follows:

1. The Court has jurisdiction over this case under 26 U.S.C. §§ 7402 and 7604(a) and 28 U.S.C. §§ 1340 and 1345.
2. UBS is an international bank that is also found within this district.
3. Daniel Reeves is a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Division of the Internal Revenue Service. He is assigned to the Internal Revenue Service's Offshore Compliance Initiative.
4. Revenue Agent Reeves is conducting an investigation to determine the identity of US taxpayers who have violated the Internal Revenue Code by failing to report the existence of, and income earned in, undeclared Swiss accounts with UBS.

5. On February 18, 2009, this Court approved a “Deferred Prosecution Agreement” (DPA) between UBS and the United States, in which UBS admitted that it had engaged in certain specified criminal activities in violation of U.S. law. United States v. UBS AG, 09-60033-CR-COHN (S.D. Fl.) Those activities relate to the matters discussed in the Declaration of Daniel Reeves, filed in support of this petition. The Court should take judicial notice of the DPA and the Court’s files in that case. United States v. Rey, 811 F.2d 1453, 1457 n. 5 (11th Cir. 1987).

6. Attached to the DPA is a Statement of Facts that UBS admits are true. In the Statement of Facts, UBS admitted the following, among other things:

- a. “Beginning in 2000 and continuing until 2007, UBS . . . participated in a scheme to defraud the United States and . . . the IRS, by actively assisting or otherwise facilitating a number of U.S. individual taxpayers in establishing accounts at UBS in a manner designed to conceal the U.S. taxpayers’ ownership or beneficial interest in such accounts.” ¶ 4.A.
- b. UBS “private bankers and managers would actively assist or otherwise facilitate certain undeclared U.S. taxpayers, who such private bankers and managers knew or should have known were evading United States taxes, by meeting with such clients in the United States and communicating with them via U.S. jurisdictional means in a regular and recurring basis with respect to the their UBS undeclared accounts. This enabled the U.S. clients to conceal from the IRS the active trading of securities held in such accounts and/or the making of payments and/or asset transfers to or from such accounts. Certain UBS executives and managers who knew of the conduct described in this paragraph continued to operate and expand the U.S. cross-border business because of its profitability.” ¶ 4.C.
- c. “In or about 2004, the UBS Wealth Management International business changed its compensation approach . . . Thereafter, the managers of the U.S. cross-border business implemented this new compensation structure in a way that provided incentives for U.S. cross-border private bankers to expand the size of the U.S. cross-border business. This encouraged those private bankers to have increased contacts in the United States with U.S.-resident clients via travel to the United States and contact with U.S. clients via telephone, fax, mail and/or e-mail.” ¶ 5.

- d. “During the relevant period [2001 through 2007], Swiss-based UBS private bankers also traveled to the United States to meet with certain of their U.S. private clients, . . . These [45 to 60 Swiss-based] private bankers traveled to the United States an average of two to three times per year, in trips that generally varied in duration from one to three weeks, and generally tried to meet with three to five clients per day. An internal UBS document estimated that U.S. cross-border business private bankers had made approximately 3,800 visits with clients in the United States during 2004. In addition, while in Switzerland, these private bankers would communicate via telephone, fax, mail and/or e-mail with certain of their private clients in the United States about their account relationships, including on occasion to take securities transaction orders in respect of offshore company accounts. Private bankers in the U.S. cross-border business typically traveled to the United States with encrypted laptop computers to maintain client confidentiality and received training on how to avoid detection by U.S. authorities while traveling to the United States.” ¶ 6.
- e. “The U.S. cross border business generated approximately \$120 million - \$140 million in annual revenues for UBS. . .”. ¶ 8. This conflicts with the estimate of two other sources that UBS’s cross-border business generated \$200 million in annual profits. See, Reeves Decl., ¶ 43.

7. On July 1, 2008, this Court issued an order granting the United States leave to serve a “John Doe” summons on UBS AG. Case No. 08-21864-MC-LENARD/GARBER.

8. Internal Revenue Agent Arthur S. Brake is authorized to issue “John Doe” summonses pursuant to 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, 26 C.F.R. § 301.7602-1T, and Internal Revenue Service Delegation Order No. 4 (as revised).

9. In furtherance of the investigation described in ¶ 4 above, on July 21, 2008 Revenue Agent Brake issued a “John Doe” summons to UBS. That summons directed UBS to appear before Revenue Agent Reeves or his designee on August 8, 2008 at 10:00 a.m., at the place identified in the summons, to give testimony and produce for examination certain books, papers, or other data as described in the summons.

10. Revenue Agent Brake served an attested copy of the summons on July 21, 2008 by delivering it in person to James Dow, Director & Head of Compliance for UBS.

11. UBS failed to appear on August 8, 2008. To date, UBS has failed to comply in full with the summons.

12. Except for the items specifically identified in Revenue Agent Reeves's Declaration filed with this Petition, the testimony and documents described in the summons are not already in the possession of the IRS.

13. All administrative steps required by the Internal Revenue Code for the issuance of the summons have been followed.

14. The testimony, books, records, papers, and/or other data sought by the summons may be relevant to the IRS's investigation.

15. The identities of the "John Does" are unknown. Accordingly, the IRS does not know whether there is any "Justice Department referral," as that term is defined by 26 U.S.C. § 7602(d)(2), in effect with respect to any unknown "John Doe" for the years under investigation.

16. The Declarations of Daniel Reeves and Barry B. Shott filed with this Petition establish the four elements necessary to prove a *prima facie* case to enforce the summons:

- a. The investigation will be conducted pursuant to a legitimate purpose.
- b. The information sought may be relevant to that purpose.
- c. The information sought is not already in the possession of the IRS.
- d. All administrative steps required by the Internal Revenue Code have been followed.

United States v. Powell, 379 U.S. 48, 57-58 (1964). Accordingly, the burden now shifts to the respondent to show why the summons should not be enforced. United States v. Medlin, 986 F.2d 463, 466 (11th Cir. 1993).

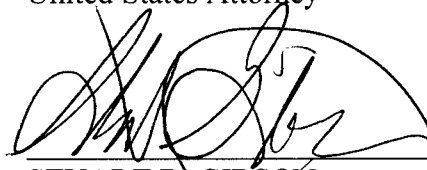
WHEREFORE, the United States respectfully prays that the Court:

A. Enter an order directing the respondent to show cause, if any it has, why it should not comply with summons in all respects; and,

B. Enter an order directing the respondent to comply in full with the summons, by ordering the respondent to appear, testify and produce documents demanded in the summons, before Revenue Agent Daniel Reeves, or such other officer or employee of the IRS that it may designate, within 10 days of entry of the Order, or at such later time and place as may be set by Revenue Agent Reeves or such other officer or employee of the IRS.

R. ALEXANDER ACOSTA
United States Attorney

By:



2/18/2009

STUART D. GIBSON
Senior Litigation Counsel, Tax Division
U.S. Department of Justice
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Telephone: (202) 307-6586
Facsimile: (202) 307-2504
Stuart.D.Gibson@usdoj.gov

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

<p>I. (a) PLAINTIFFS United States of America</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Stuart D. Gibson, U.S. Department of Justice Tax Division, P.O. Box 403 Washington, DC 20044 (202) 307-6586</p>	<p>DEFENDANTS UBS AG</p> <p>County of Residence of First Listed Defendant <u>Dade</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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FILED by D.C.
 FEB 19 2009
 STEVEN M. LARIMORE
 CLERK U.S. DIST. CT.
 S.D. FLA. - MIAMI

(a) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Foreign Nation</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>	Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input type="checkbox"/>	Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>
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Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE Lenard DOCKET NUMBER 08-mc-21864-JAL

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

26 U.S.C. Section 7604, Petition to Enforce "John Doe" Summons

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: DATE: 2/18/2009

FOR OFFICE USE ONLY

AMOUNT NFR RECEIPT # _____ IFP _____

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. **09-20423**  **- GOLD**

McALILEY

UNITED STATES OF AMERICA,)
)
Petitioner,)
)
v.)
)
UBS AG,)
)
Respondent.)

ORDER TO SHOW CAUSE

Upon the petition of the United States, and the Declarations of Barry B. Shott and Daniel Reeves, and the summons attached to the Reeves Declaration, it is hereby

ORDERED that the respondent, UBS AG, appear before the United States District Court for the Southern District of Florida, before the Honorable _____, in that Judge's courtroom in the United States Courthouse at 400 North Miami Avenue in Miami, FL 33128 on the _____ day of _____, 2009, at _____ .m., to show cause why UBS AG should not be compelled to comply in full with the Internal Revenue Service summons served on it on July 21, 2008. It is further

ORDERED that a copy of this Order, together with the Petition and Declarations, be personally served on UBS AG by an official of the Internal Revenue Service within eleven (11) days of the date of this Order. It is further

ORDERED that within eleven (11) days of service of copies of this Order and the Petition and the Declarations upon it, the respondent shall file and serve written responses to the Petition supported by appropriate affidavit(s), as well as any motions it desires to make. It is further

ORDERED that all motions and issues raised by respondent will be considered upon the return date of this Order, that only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavit(s) will be considered at the return of this Order, and that any allegations in the Petition not contested by affidavit(s) will be considered as admitted for the purpose of this enforcement proceeding. Affidavits in opposition to the Petition or in support of any motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Any affidavit failing to comply with this standard shall not be considered by this Court. It is further

ORDERED that if respondent files an objection to the entry of an order granting the relief sought in the Petition filed in this case, the petitioner shall have eleven (11) days from the date the respondent files its opposition in which to file a Reply which may be supported by additional affidavit(s), which shall be subject to the same requirements as the affidavit(s) which the respondent may offer. It is further

ORDERED that if respondent has no objection to entry of an order directing compliance with the summons issued to it, it will not be required to respond or appear as ordered above if the Clerk of the Court receives written notification thereof (with copies to counsel for petitioner) at least five (5) business days prior to the hearing scheduled above.

Entered this ____ day of _____, 2009.

UNITED STATES DISTRICT JUDGE

COPY TO:

STUART D. GIBSON
Department of Justice
Tax Division
P.O. Box 403
Ben Franklin Station
Washington, D.C. 20044
Stuart.D.Gibson@usdoj.gov

COUNSEL FOR PETITIONER